

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)

Pine Belt Cellular, Inc.)
and Pine Belt PCS, Inc.)

Petition for Designation as an)
Eligible Telecommunications)
Carrier)

DOCKET FILE COPY ORIGINAL

CC Docket No. 96-45
FCC 97-419

RECEIVED

NOV 26 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Common Carrier Bureau

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

John C. Nettles, President
Pine Belt Cellular, Inc. and
Pine Belt PCS, Inc.
3984 County Road 32
Arlington, Alabama 36722

Phyllis A. Whitten
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Dated: November 26, 2001

No. of Copies rec'd 045
List A B C D E

TABLE OF CONTENTS

I.	PINE BELT’S UNIVERSAL SERVICE OFFERINGS	2
II.	PINE BELT SATISFIES ALL THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER	3
A.	Pine Belt is not Subject to the Jurisdiction of the Alabama Public Service Commission (“APSC”)	3
B.	Pine Belt Offers all of the Services Supported by the Federal High-Cost Universal Service Program.....	4
C.	Pine Belt Provides the Supported Services Using its Own Facilities	7
D.	Pine Belt Will Advertise its Universal Service Offering	7
E.	Designating Pine Belt as an ETC Will Advance the Public Interest	8
III.	ANTI-DRUG ABUSE CERTIFICATION	8
IV.	CONCLUSION.....	9

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Pine Belt Cellular, Inc.)	CC Docket No. 96-45
and Pine Belt PCS, Inc.)	FCC 97-419
)	
Petition for Designation as an)	
Eligible Telecommunications)	
Carrier)	
)	

To: Chief, Common Carrier Bureau

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER**

Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively “Pine Belt” or “Pine Belt companies”), pursuant to Section 214(e)(6) of the Communications Act of 1934, as amended (“Act”), and the Commission’s Public Notice implementing Section 214(e)(6),¹ hereby petitions the Common Carrier Bureau to designate the Pine Belt companies as eligible telecommunications carriers (“ETCs”) for service areas in Alabama currently served by Verizon South, Inc. (“Verizon”) and BellSouth Telecommunications, Inc. (“BellSouth”).²

¹ Public Notice, “Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act,” FCC 97-419, 12 FCC Rcd. 22497 (1997). In the Notice, the Commission delegated authority to the Common Carrier Bureau to designate carriers as ETCs. In accordance with the Notice, a certification that Pine Belt meets the criteria for ETC status and that it complies with the Anti-Drug Abuse Act is attached to this Petition as Exhibit 1.

² Pine Belt’s service territories are listed on Exhibit 3.

The Alabama Public Service Commission (“APSC”) lacks jurisdiction to consider Pine Belt’s request,³ and therefore the Federal Communications Commission (“FCC”) clearly has jurisdiction under Section 214(e)(6) to consider and grant this petition. As demonstrated below, Pine Belt meets all the requirements for ETC designation to serve Alabama customers. Designating Pine Belt as an ETC will serve the public interest.

I. PINE BELT’S UNIVERSAL SERVICE OFFERINGS

Pine Belt provides cellular telecommunications and personal communications services (collectively referred to as “CMRS” or “wireless”) in the service areas of Alabama pictured on the map attached as Exhibit 3. Wireless service territories served by Pine Belt in accordance with licenses granted by the Federal Communications Commission (“FCC”) include Alabama Rural Service Area 3B2 for cellular services and the Selma basic trading area (FCC Market B415) for personal communications services. The Pine Belt companies are affiliated with Pine Belt Telephone Company, a provider of wireline telephone service in rural Alabama.

Each Pine Belt company seeks to be designated as a universal service eligible telecommunications carrier (“ETC”) to provide wireless ETC service in the non-rural Alabama wireline service territories of BellSouth and Verizon (the service territories requested are listed on Exhibit 3).

Pine Belt seeks ETC designation to expand its telecommunications offerings to consumers within its authorized wireless service areas. Pine Belt provides all of the services and functionalities supported by the federal universal service program, enumerated in Section 54.101(a) of the Commission’s rules, throughout its service areas in Alabama. Upon ETC designation, Pine Belt will make available to consumers a universal service offering over its

³ See Exhibit 2.

existing networks infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used by the company to serve its customers. Pine Belt also will provide service to any requesting customer within the designated service areas, and if necessary will deploy any additional facilities necessary to do so.

II. PINE BELT SATISFIES ALL THE STATUTORY AND REGULATORY PREREQUISITES FOR DESIGNATION AS AN ELIGIBLE TELECOMMUNICATIONS CARRIER

Pine Belt satisfies each of the five elements set forth in the Commission's Section 214(e)(6) Procedure Public Notice, as shown below.

A. Pine Belt is not Subject to the Jurisdiction of the Alabama Public Service Commission ("APSC")

Pine Belt provides commercial mobile radio service ("CMRS"), and the Commission has previously recognized that a CMRS provider may seek designation as an ETC.⁴ Section 332(c)(3) of the Act precludes rate and entry regulation of CMRS providers by state public utility commissions.⁵ This Commission has jurisdiction, under Section 214(e)(6), to designate CMRS providers as ETCs.

Consistent with the foregoing, APSC Administrative Law Judge John Garner, in a letter attached to this Petition as Exhibit 2, recently concluded that Pine Belt is not subject to state

⁴ See *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, First Report and Order, 12 FCC Rcd. 8776, 8858-59, ¶ 145 (1997) ("Universal Service First Report and Order"); *Federal-State Joint Board on Universal Service, Access Charge Reform*, Seventh Report and Order and Thirteenth Order on Reconsideration in CC Docket No. 96-45, Fourth Report and Order in CC Docket No. 96-262, and Further Notice of Proposed Rulemaking, FCC 99-119 at ¶ 72 (released May 28, 1999).

⁵ 47 U.S.C. § 332(c)(3). State implementation of Section 214(e) is arguably a form of entry regulation (particularly given the overall focus of Section 214 of the Act on authorizing carriers to extend facilities or to provide service). See also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket No. 96-45, Further Notice of Proposed Rulemaking, FCC 99-204, ¶¶ 78, 82 (released September 3, 1999) (suggesting that FCC may designate CMRS providers as ETCs under 47 U.S.C. 214(e)(6) and 332(c)(3)).

jurisdiction in Alabama and therefore must seek ETC designation from the FCC pursuant to Section 214(e)(6). Pine Belt had submitted an ETC application petitioning the APSC for designation as an ETC. However, as the attached letter from Judge John Garner explains, the APSC has no jurisdiction to take action on the application of Pine Belt companies for ETC status.⁶

As Judge Garner explains, the APSC issued a Declaratory Ruling on March 2, 2000, in Docket No. 26414 which concluded that as the result of certain amendments to the *Code of Alabama*, 1975 § 40-21-120(2) and (1)(a) effectuated in June of 1999, the APSC has no authority to regulate in any respect cellular services, broadband personal communications services and commercial mobile radio services in Alabama.

B. Pine Belt Offers all of the Services Supported by the Federal High-Cost Universal Service Program

Pine Belt satisfies the FCC's requirements that an ETC designated pursuant to Section 214(e)(6) "offer, or will be able to offer all of the services designated for support by the Commission."⁷ As described below, Pine Belt currently offers each of the supported services described in Section 54.101(a) of the Commission's rules.⁸ Once designated as an ETC, Pine Belt will make available a "universal service" offering that includes all of the supported services for consumers in the designated service areas in Alabama.

⁶ See Exhibit 2.

⁷ *Designation of Fort Mojave Telecommunications, Inc., et al., as Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, 13 FCC Red. 4547, 4553, ¶ 11 (CCB 1998) ("Fort Mojave"). A declaration attesting to Pine Belt's ability and commitment to offer each of the supported services is attached hereto at Exhibit 1.

⁸ 47 C.F.R. § 54.101(a).

1. Voice-Grade Access to the Public Switched Network. As an existing CMRS service provider in Alabama, Pine Belt provides voice-grade access to the public switched network. Through interconnection agreements with ILECs Pine Belt is able to originate and terminate telephone service for all of its subscribers.
2. Local Usage. Pine Belt currently offers several service options that include varying amounts of local usage in monthly service plans. Pine Belt intends to offer its universal service customers a rate plan that includes unlimited local usage. Pine Belt will satisfy the local usage criterion for ETC designation based upon its offering of unlimited local usage calling plans.
3. Functional Equivalent of Touch-Tone (“DTMF”) Signaling. Pine Belt currently uses out-of-band digital signaling and in-band multi-frequency (“MF”) signaling that is functionally equivalent to DTMF signaling. Pine Belt therefore meets the requirement to provide DTMF signaling or its functional equivalent.⁹
4. Single Party Service. Pine Belt meets the requirement of single-party service by providing a dedicated message path for the length of all customer calls.¹⁰
5. Access to Emergency Service. Pine Belt currently offers access to emergency service throughout its cellular service area by dialing 911. Enhanced 911 (“E911”), which includes the capability of providing both

⁹ *Universal Service First Report and Order*, 12 FCC Rcd. at 8815, ¶ 71 (1997).

¹⁰ *Id.* at 8810, ¶ 62.

automatic numbering information (“ANI”) and automatic location information (“ALI”), is required only if a public emergency service provider makes arrangements for the delivery of such information.¹¹ Pine Belt has completed Phase I E911 implementation in all jurisdictions that have requested it (four of the five counties served by Pine Belt). No public emergency service provider in Pine Belt’s service territory has requested Phase II compliance. The Commission has already held that wireless providers may be designated as ETCs despite the current unavailability of E911.¹² By providing 911 service and being capable and ready to provide E911 service upon request, Pine Belt meets the requirement to provide access to emergency service.

6. Access to Operator Services. Pine Belt offers its subscribers access to operator services and will make such services available throughout its designated service area.
7. Access to Interexchange Service. Pine Belt presently meets this requirement to provide all of its customers with the ability to make and receive interexchange or toll calls through direct interconnection arrangements the Company has with an interexchange carrier (“IXC”).
8. Access to Directory Assistance. Pine Belt meets this requirement by providing all of its customers with access to directory assistance by dialing “411” or “555-1212.”

¹¹ *Id.* at 8826-27, ¶ 90.

¹² *Id.*

9. Toll Limitation for Qualifying Low-Income Customers. Once designated an ETC, Pine Belt will participate in Lifeline as required, and will offer toll blocking in satisfaction of the FCC's requirement. Today, the Company provides toll blocking services for international calls and customer selected toll calls. Pine Belt will utilize the same toll blocking technology to provide toll limitation for qualifying low-income customers, at no charge, as part of its universal service offerings.

C. Pine Belt Provides the Supported Services Using its Own Facilities

Pine Belt provides the supported services under Section 214(e)(1)(A) of the Act and Section 54.101(a) of the Commission's rules using Pine Belt's existing network infrastructure, consisting of switching, trunking, cell sites, and network equipment, together with any expansions and enhancements to that network.

D. Pine Belt Will Advertise its Universal Service Offering

Pine Belt will advertise the availability of its universal service offering, and the charges therefor, using media of general distribution. Currently, Pine Belt employs several advertising mediums to promote its service offerings, including television, radio, newspaper, and billboard advertising, as well as special targeted advertising. Pine Belt will expand upon these media, as necessary, to insure that consumers within its designated service area are fully informed of its universal service offering. Moreover, given the fact that ETCs receive universal service support only to the extent they serve customers, and given the investments Pine Belt plans to make to enhance its network to fully serve the universal service needs of consumers in Alabama, Pine Belt will have strong economic incentives, reinforcing its statutory obligations, to vigorously promote its universal service offering in Alabama.

E. Designating Pine Belt as an ETC Will Advance the Public Interest

Pine Belt requests designation for service areas of BellSouth and Verizon in Alabama. The designation of the Pine Belt companies as ETCs clearly is in the public interest.¹³ Designating Pine Belt as an ETC will promote competition in the provision of universal services to the benefit of consumers in Alabama.¹⁴ In addition, designating Pine Belt as an ETC will advance universal service by bringing consumers in Alabama new telecommunications services, including wireless local loop service.

III. ANTI-DRUG ABUSE CERTIFICATION

The Pine Belt companies certify that no party to this Petition is subject to a denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.¹⁵

¹³ 47 U.S.C. § 214(e)(2). Under Section 214(e)(6), the Commission stands in the place of a state commission for this purpose.

¹⁴ See *Universal Service First Report and Order*, 12 FCC Rcd. at 8781, ¶ 4 (quoting Joint Explanatory Statement recital that goal of 1996 Act is to establish “a pro-competitive . . . framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to **all** Americans by opening *all* telecommunications markets to competition”) (emphasis added).

¹⁵ 21 U.S.C. § 862. See attached Certification at Exhibit 1.

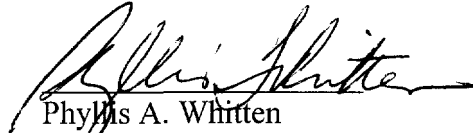
IV. CONCLUSION

For the foregoing reasons the Pine Belt companies respectfully request ETC designation for the requested service territories in Alabama.

Respectfully Submitted,

PINE BELT CELLULAR, INC.
AND PINE BELT PCS, INC.

John C. Nettles, President
Pine Belt Cellular, Inc. and
Pine Belt PCS, Inc.
3984 County Road 32
Arlington, Alabama 36722


Phyllis A. Whitten
Swidler Berlin Shereff Friedman, LLP
3000 K Street, N.W., Suite 300
Washington, D.C. 20007
(202) 424-7500

Date: November 26, 2001

CERTIFICATE OF SERVICE

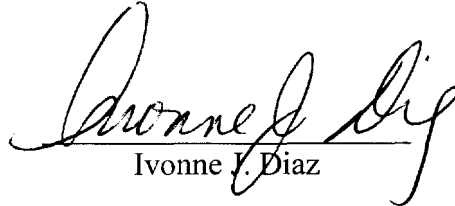
I, Ivonne J. Diaz, hereby certify that on this 26th day of November 2001, copies of the foregoing Petition for Designation as an Eligible Telecommunications Carrier were hand delivered to those parties marked with an asterisk. All others were served by First Class mail.

Sheryl Todd *
Universal Service Branch
Accounting and Audits Division
Common Carrier Bureau
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Administrative Law Judge John Garner
Alabama Public Service Commission
RSA Building
100 North Union Street
Suite 850
Montgomery, Alabama 36101

Richard Smith *
Accounting Policy Division
Federal Communications Commission
9300 East Hampton Drive
Capitol Heights, MD 20743

Walter L. Thomas, Jr., Secretary
Alabama Public Service Commission
RSA Building
100 North Union Street
Suite 850
Montgomery, Alabama 36101



Ivonne J. Diaz

EXHIBITS

Exhibit 1

Declaration of John C. Nettles

Exhibit 2

Letter from Alabama Public Service Commission Administrative Law Judge John Garner to counsel for Pine Belt

Exhibit 3

Map of Pine Belt Service Territory and List of Service Territories Requested

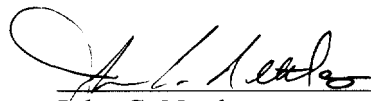
Exhibit 1

Declaration of John C. Nettles

I, John C. Nettles, do hereby declare under penalty of perjury as follows:

1. I am President of Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. ("the Pine Belt companies").
2. This Declaration is submitted in support of Pine Belt's Petition for Designation as an Eligible Telecommunications Carrier to serve Alabama.
3. I declare and certify as follows, and as described in the aforementioned petition, that: the Pine Belt companies are not subject to the jurisdiction of a state commission; the Pine Belt companies offer, or will offer, all of the services designated by the Commission for support pursuant to Section 254(c)(3) of the Act; each of the Pine Belt companies offer, or will offer, the supported services either using its own facilities or a combination of its own facilities and resale of another carrier's services; and the Pine Belt companies advertise, or will advertise, the availability of supported services and the charges therefor using media of general distribution as described in the Advertising Plan attached to the aforementioned Petition.
4. I declare that to the best of my knowledge, the Pine Belt companies, including all officers, directors, or persons holding 5% or more of the outstanding stock or shares (voting and/or nonvoting) of Pine Belt as specified in Section 1.2002(b) of the Commission's rules are not subject to a denial of federal benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. Section 862.
5. I further declare that I have reviewed the aforementioned Petition and that the facts stated therein, of which I have personal knowledge, are true and correct to the best of my knowledge and belief.

I declare under penalty of perjury that the foregoing is true and correct.


John C. Nettles
President

Date: 11/21/01

Exhibit 2

**Letter from Alabama Public Service Commission Administrative Law Judge John Garner
to counsel for Pine Belt**



STATE OF ALABAMA
ALABAMA PUBLIC SERVICE COMMISSION
P.O. BOX 991
MONTGOMERY, ALABAMA 36101-0991

October 19, 2001

JIM SULLIVAN, PRESIDENT

JAN COOK, ASSOCIATE COMMISSIONER

GEORGE C. WALLACE, JR., ASSOCIATE COMMISSIONER

WALTER L. THOMAS, JR.

SECRETARY

Phyllis A. Whitten
Swidler Berlin, Shereff Friedman, LLP
3000 K Street, NW, Suite 300
Washington, DC 20007-5116

Dear Ms. Whitten:

I am in receipt of the Application for ETC Status and Request for Clarification Regarding Jurisdiction which you filed with the Alabama Public Service Commission (the "APSC") on September 11, 2001, on behalf of your clients Pine Belt Cellular, Inc. and Pine Belt PCS, Inc. (collectively "Pine Belt" or the "Pine Belt companies"). As noted in your filing, both Pine Belt companies are affiliated with Pine Belt Telephone Company, a provider of wireline telephone service in Alabama.

I understand from your filing that the Pine Belt companies provide cellular telecommunications and personal communications (collectively referred to as "CMRS" or "wireless") services within Alabama in accordance with licenses granted by the Federal Communications Commission (the "FCC"). According to your representations, the service territories of the Pine Belt companies in Alabama include Alabama Rural Service Area 3B3 for cellular services and the Selma basic trading area (FCC market B415) for personal communications services.

3 B 2

As recognized in your filing, state commissions have primary responsibility under 47 USC §214(e) for the designation of eligible telecommunications carriers ("ETCs") in their respective jurisdictions for universal service purposes. The APSC established the guidelines and requirements for attaining ETC status in this jurisdiction pursuant to notice issued on October 31, 1997. As a threshold matter, your filing seeks clarification as to whether the APSC will assert jurisdiction over each Pine Belt company's request to be designated as a universal service eligible telecommunications carrier to provide wireless ETC service in the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. and Verizon South, Inc.

The issue concerning the APSC's jurisdiction over providers of cellular services, broadband personal communications services and commercial mobile radio services is one that was rather recently addressed by the APSC. The APSC indeed issued a Declaratory Ruling on March 2, 2000, in Docket 26414 which concluded that as the result of certain amendments to the Code of Alabama, 1975 §40-21-120(2) and (1)(a) effectuated in June

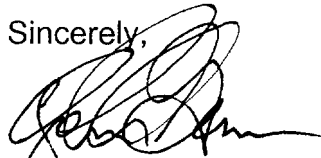
PHYLLIS A. WHITTEN
OCTOBER 19, 2001
PAGE #2

of 1999, the APSC has no authority to regulate *in any respect* cellular services, broadband personal communications services and commercial mobile radio services in Alabama.

Given the above conclusion by the APSC, it seems rather clear that the APSC has no jurisdiction to take action on the Application of the Pine Belt companies for ETC status in this jurisdiction to provide wireless ETC service in the non-rural Alabama wireline service territories of BellSouth Telecommunications, Inc. and Verizon South, Inc. The Pine Belt companies should instead pursue their ETC designation request with the FCC as provided by 47 USC §214(e)(6).

Although the views expressed herein are those of your writer and do not necessarily constitute an official action of the APSC, I am confident that this writing provides the clarification you requested concerning the ETC designation request of your clients. Should you need further clarification in order to pursue ETC designations for the Pine Belt companies at the FCC, please do not hesitate to contact me at (334) 242-5200.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Garner", written over a horizontal line.

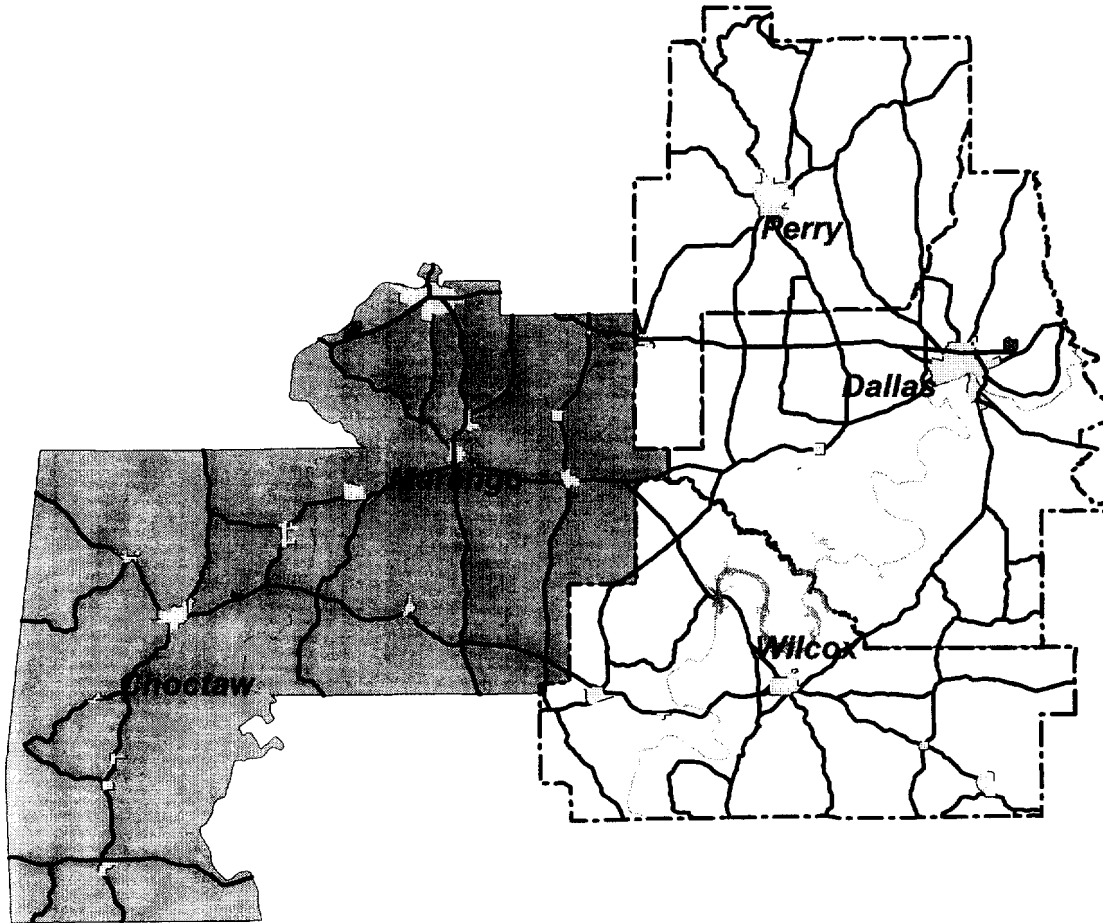
John A. Garner
Administrative Law Judge

JAG:klr

Exhibit 3

**Map of Pine Belt Service Territory
and
List of Service Territories Requested**

Service Territory Map



Service Territories Requested

Only those certain ILEC areas within the Alabama counties of Choctaw, Dallas, Marengo, Perry, and Wilcox currently served by BellSouth and Verizon.

These areas include parts if not all of the exchange areas of Alberta, Brent/Centreville, Demopolis, Greensboro, Maplesville, Marion, Orrville, Pine Hill, Plantersville, Selma, Thomasville, and Union Town.